

Notice Concerning Waiver of Judicial  
Disqualification

From: Katie Hord Simon, Clerk of Court

Date: November 4, 2024

To: Jennifer E. Parsigian (Counsel)  
Jeffrey L. Kessler (Counsel)  
Matthew R. DalSanto (Counsel)  
Michael P. Toomey (Counsel)  
E. Danielle T. Williams (Counsel)  
Anna M. Rathbun (Counsel)  
Christopher J. Brown (Counsel)  
Christopher S. Yates (Counsel)  
Lawrence E. Buterman (Counsel)  
Patricia Wilson Magee (Counsel)

Re: 2311 Racing LLC, et al. v. National Association for Stock Car Auto Racing, LLC,  
Case No. 3:24-cv-00886-FDW-SCR

Canon 3D of the Code of Conduct provides (with exceptions not pertinent to this case) that when a judge is disqualified in a proceeding because “the judge’s impartiality might reasonably be questioned,” the judge may participate in the proceeding only if all the parties and lawyers, after notice of the basis for the disqualification, have an opportunity to confer outside of the presence of the judge and all agree in writing or on the record to waive the disqualification under a procedure independent of the judge’s participation.

Unless a waiver is obtained from all parties and all counsel, Judge Whitney intends to disqualify in this proceeding because of these circumstances: Local counsel for Defendants previously served as Judge Whitney’s Career Law Clerk and left service with the Court on July 26, 2024.

If you and your clients wish to waive the judge’s disqualification, a letter to that effect from you and from your clients must be sent to me no later than 3:00 p.m. today. Should you require additional time, please note that the hearing on Plaintiff’s Motion for Preliminary Injunction currently scheduled for 2:00 p.m. today will need to be continued. If all parties waive disqualification, Judge Whitney will proceed with the hearing at 3:30 p.m. today.

A sample waiver letter is enclosed. The letter should be signed and submitted by the attorney of record only after consultation with all of his or her clients in the above-styled and numbered cause. The letter should not be sent to the judge and copies should not be sent to other counsel. **DO NOT E-FILE YOUR LETTERS. SUBMIT THEM DIRECTLY BY EMAIL TO THE CLERK OF COURT.** If all parties submit such letters, this Notice and all responses will be made part of the record, as required by Canon 3D, and the judge will continue participation in the proceeding. If a waiver is not received on behalf of all parties and their respective counsel, this Notice and any

responses will be kept under seal by the clerk and not shown to the judge, nor will the judge be informed of the identity of any party or lawyer who declined to waive the disqualification. If the disqualification is not waived, the case will be reassigned to another judge.

Signed,

/s/ KHS

Katie Hord Simon

Clerk of Court

United States District Court for the  
Western District of North Carolina

Sample Waiver of Disqualification Letter - CIVIL CASES

**NOTICE TO ATTORNEYS: DO NOT E-FILE THIS FORM; SUBMIT DIRECTLY TO THE CLERK OF COURT**

From: XXXX XXXX  
[Address]

Jeff Kessler  
Winston & Strawn LLP  
200 Park Avenue  
New York, New York 10166

To: Clerk of the Court  
United States District Court  
for the western District of North Carolina  
[Address]

Date: 11/4/2024

Re: ABC v. DEF, Case No. 3:24-cv-0886

Dear Clerk:

R311 Racing LLC and Front Row Motorsports Inc.

I have consulted with my client(s), A, which are all of the clients that I represent in the above-styled and numbered cause, concerning the Clerk's Notice that Judge Whitney intends to disqualify himself/herself from this case because his /her impartiality might reasonably be questioned. My client(s) and I hereby waive this disqualification. We are willing to proceed forward with Judge Whitney presiding.

Pursuant to Canon 3D of the Code of Conduct, I am submitting this letter to the clerk's office, but I am not copying Judge Whitney, nor am I copying the other counsel of record or the other parties.

Yours truly,

/s/ [Signature]  
XXXX XXXX

Attorney of Record, on behalf of:

[Client 1] 23XI Racing

[Client 2] (etc) Front Row Motorsports